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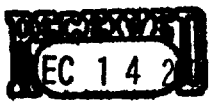

Docket Coordinator, Headquarters,
United States Environmental Protection Agency
CERCLA Docket Office
1235 Jefferson Davis Highway
Crystal Gateway #1, First Floor
Arlington, VA 22202

Re: National Priorities List for Uncontrolled Hazardous Waste Sites.
Proposed Rule No.37, 66 FR 47612, September 13, 2001
NPL Listing of Sauget Area 1, Sauget, Illinois

Dear Sir/Madam:

On behalf of our client, Cerro Copper Products Co. ("Cerro"), we enclose an original and three copies of Cerro's comments in response to the National Priorities List ("NPL") for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 37, published at 66 Fed. Reg. 47612 on September 13, 2001. We also enclose and incorporate by reference an original and three copies of the following: Technical Report by ENVIRON, and the Certification of Todd M. Hooker, Esq. in support of these comments.

Cerro submits these comments pursuant to the December 13, 2001 deadline extension which was granted by the United States Environmental Protection Agency ("EPA") on October 17, 2001 (See Certification of Todd M. Hooker ("Hooker Cert."), Ex. 1).

Cerro objects to EPA's proposal to list Sauget Area 1 located in Sauget, Illinois as a site on the NPL. A careful review of the HRS Documentation Record available from EPA Region V indicates a number of flaws and inaccuracies contained in the record. In particular, EPA has failed to demonstrate an observed release to a surface water body, made inappropriate and inconsistent comparisons to background concentrations, and, contrary to CERCLA, aggregated the seven separate sites located within Sauget Area 1 rather than individually considering each site. Furthermore, EPA violated its well established policy by not considering the remediation activities conducted at the source areas known as Dead Creek when calculating the HRS score. Similarly, the Agency's proposal is inconsistent with EPA policy and procedure that dictate that portions of partially remediated sites be deleted from the NPL.

BACKGROUND

Sauget Area 1 is located in the villages of Sauget and Cahokia in west-central St. Clair County, Illinois. The area encompasses multiple sources that were allegedly used as repositories for wastes generated by local industries. EPA has identified seven sources of hazardous substances in Sauget Area 1: three former industrial landfills (Sites G, H and I), three former surface impoundments (Dead Creek Segment A "DCA", Dead Creek Segment B "DCB", and Site L) and the remaining combined segments of Dead Creek (Dead Creek Segments C through F), a stream that flows southerly in the area.

In September 1985, the Illinois Environmental Protection Agency ("IEPA") retained Ecology & Environment, Inc. ("E&E") to conduct a comprehensive investigation of the Area 1 Sites. In May 1988, E&E issued its report entitled "Expanded Site Investigation Dead Creek Project Sites at Cahokia/Sauget, Illinois" ("E&E Report").

In response to the E&E Report, Cerro expressed a desire to cooperate with IEPA in addressing the environmental concerns in the area. Cerro retained the Avendt Group, Inc. ("Avendt") to perform a site investigation and feasibility analysis of DCA, the northernmost portion of Dead Creek. Field activities began on July 5, 1989 and continued through July 21, 1989. Throughout the investigation, drafts of Avendt's study were sent to the IEPA for review and comment. Avendt's investigation recommended a removal action that involved the excavation and off-site disposal of approximately 20,000 cubic yards of contaminated creek sediment from DCA. The final report was completed in 1990 and sent to the IEPA for review and comment.

On July 5, 1990, Cerro and the State of Illinois entered into a Consent Decree in the United States District Court for the Southern District of Illinois in the action entitled People of the State of Illinois v. Cerro Copper Products Co. The Consent Decree stated that the State of Illinois had reviewed the Avendt investigation and found it consistent with the National Contingency Plan ("NCP") and the Illinois Hazardous Substances Contingency Plan, 39 Ill. Adm. Code Part 750 ("IHSCP"). The Consent Decree further stated that the State had reviewed Cerro's Removal Action Work Plan for DCA and found it to be consistent with the requirements of CERCLA, the State Act, the NCP, the IHSCP and the SI/FS.

Shortly after the entry of the Consent Decree, Cerro initiated the approved removal action for DCA. Cerro excavated and transported sediment to approved landfills, installed a plastic liner in the excavated area, and backfilled DCA with clean fill. These activities were conducted under IEPA oversight. The entire removal action was completed by November 26, 1990 at a cost of $12,836,609. Thereafter, the Illinois Attorney General and the IEPA acknowledged that Cerro had completed the removal action in accordance with the terms of the Consent Decree.

On January 21, 1999, Monsanto Company and Solutia, Inc. entered into an Administrative Order by Consent ("AOC") with EPA. The AOC required a Support Sampling Plan ("SSP"), an Engineering Evaluation/Cost Analysis ("EE/CA"), and a Remedial Investigation/Feasibility Study ("RI/FS") for the Sauget Area 1 Sites. These studies were conducted to assess the environmental and human health risks posed by the area and evaluate remedial alternatives.

On May 31, 2000, the EPA issued a Unilateral Administrative Order ("UAO"), which required Solutia, Inc. to remediate the remaining contaminated segments of Dead Creek, Segments B through E, and a sand mining pit adjacent to the creek (site M). Pursuant to the UAO, Solutia has been removing contaminated sediment from these areas and placing them into an on-site containment cell. Removal of the contaminated sediment from Dead Creek is expected to be completed well before these sites are consolidated into one mega-site for purposes of listing on the NPL. The containment cell is expected to be sealed next summer, and the creek bed will be covered with a plastic liner and a layer of concrete. On information and belief, Solutia estimates that remedial costs for this project will exceed $17,000,000.

I. EPA FAILED TO ESTABLISH AN OBSERVED RELEASE TO A SURFACE WATER BODY

The HRS Documentation Record reveals that the only pathway scored by EPA was the surface water pathway. (HRS Documentation Record at 1) The HRS score, based upon an observed release to a surface water body, is 50. (*Id.*) However, to score a surface water pathway, EPA must first establish a potential, or observed, release to a surface water body. (HRS Appendix A to 40 CFR Part 300 §4.0) A critical factor for doing so is the identification of one or more probable points of entry ("PPE"). (HRS Appendix A to 40 CFR Part 300 §4.1.1.1) EPA has failed to establish an observed release.

As ENVIRON discusses, the HRS Documentation Record identifies the forested wetland along the northern portion of Dead Creek Segment F as the impacted surface water body, and the location of the PPE. (Technical Report by ENVIRON "ENVIRON" at 1). EPA characterized this area as a perennial wetland i.e., perennially inundated with water, and thus, as a surface water body. (*Id.*) The mere labeling of the wetland as perennial, however, is insufficient to establish the existence of a surface water body, and is, in fact, incorrect. (*Id.*) The HRS Documentation Record indicates that the wetland is only periodically flooded, (*see* HRS Documentation record, Ref. 65 (1997 E&E Report)), and has been classified as an intermittent stream by the United States Department of Agriculture ("USDA"). (ENVIRON at 1). According to the HRS Guidance Manual, such intermittent streams are not considered surface water. (HRS Guidance Manual at 208) EPA's scoring of the Sauget Area 1 site based on an observed release to a surface water body, therefore, is inconsistent with its own guidance documents and the HRS Documentation Record.

II. EPA USED INAPPROPRIATE BACKGROUND SAMPLES TO ESTABLISH AN OBSERVED RELEASE

Even assuming that the "perennial wetland" is in fact a surface water body, EPA ignored its own guidance documents for establishing an observed release by chemical analysis. EPA's guidance provides, in pertinent part, that "[a] background level for a site provides a reference point by which to evaluate whether or not a release of hazardous substance from the site has occurred." (HRS Guidance Manual at 67) Determining accurate background concentrations is required to establish an observed release by chemical analysis. (*Id.*) Moreover, EPA's determination of background concentrations must be "defensible." (*Id.*) Solutia's selection, and EPA's approval, of background locations for Sauget Area 1 is indefensible and violates EPA's own guidance on the subject. Accordingly, EPA's use of these background concentrations to establish an observed release is arbitrary, capricious and contrary to law.

The HRS Guidance manual recommends that background samples "should be as similar as possible, except for potential influence from the site." (HRS Guidance Manual at 67) Moreover, in its Support Sampling Plan, Solutia indicated that it would select background sampling points in the Dead Creek watershed or an area that reflected the industrial, commercial, residential and farming land uses of the Sauget and Cahokia area. (ENVIRON at 3)

However, the background sampling location relied upon by EPA, Borrow Pit Lake, is significantly dissimilar to Dead Creek. (ENVIRON at 1-3) Borrow Pit Lake, not surprisingly, derived its name from a massive excavation that occurred in approximately 1954 in order to provide materials for construction of levees in the area. (ENVIRON at 2) The excavation to its current size likely resulted in the significant removal of sediments and/or naturally occurring soils from the area. (ENVIRON at 2) Borrow Pit Lake therefore is in no way similar or equivalent to a natural water body such as Dead Creek. (ENVIRON at 2) As a result, the use of Borrow Pit Lake as background sampling location is inappropriate and inconsistent with EPA's HRS guidance, and consequently cannot be used to establish that a release has occurred.

EPA has set the minimum standard to establish an observed release as analytical evidence of a hazardous substance in the media "significantly above" the background level. (HRS Appendix A to 40 CFR Part 300 § 2.3) As discussed above, EPA has disregarded its own procedures and has not collected appropriate background samples. Without appropriate background samples, EPA has no baseline against which to compare the concentrations of hazardous substances in the alleged release. If a meaningful comparison cannot be made, then EPA cannot make the relative determination that a release occurred significantly above background levels. Simply put, EPA cannot compare release data with inappropriate background data to conclude that a release has occurred significantly above background levels.

III. EPA HAS NOT PRESENTED A REASONABLE SCIENTIFIC BASIS FOR CONCLUDING THAT THE OBSERVED RELEASE MAY BE ATTRIBUTED TO EACH OF THE SOURCES

The HRS regulations require that, in order to establish an observed release by chemical analysis, "some portion of the release must be attributable to the site." (HRS Appendix A to 40 CFR Part 300 §2.3) In the HRS Documentation Record, EPA asserts that "hazardous substances in every source at the site are available to migrate to surface water by overland flow or flood," and then concludes that the "observed releases by chemical analysis reflect commingled contamination from each source at the site." (HRS Documentation Record at 73 and 85) However, the data presented and relied upon by EPA in the HRS Documentation Record does not support such an assertion, and, in fact, reveals fatal flaws in EPA's conclusion.

1. The HRS Documentation Record Does Not Support EPA's Contention That Surface Water From Sites G, H and I Have Impacted The PPE

The primary source areas within the Area 1 Sites are Sites G, H and I, each of which are in excess of two miles from the PPE on which EPA bases its finding of an observed release. EPA has not and cannot establish that contaminants from these Sites have migrated via surface water to the PPE.

For example, EPA completely ignores the fact that the surface water from Site I flows south into a municipal storm water sewer located on the north side of Queeny Avenue. (Hooker Cert Ex. 2) That sewer line flows east, away from Dead Creek, and then into a trunk line that follows Falling Springs Road north. (*Id.*) Moreover, in approximately 1969, Cerro constructed a railroad spur that runs parallel to the former DCA and separated DCA from Site I. (Hooker Cert Ex. 3 and 4; *see also* ENVIRON at 6) Because of its elevation and location, the railroad spur acted as a barrier between DCA and Site I, preventing storm water run-off from Site I migrating into DCA. (*Id.*)

A USGS topography map is the primary reference document cited by EPA in support of its contention that Site I has a hydrological link to Dead Creek and the PPE. (*See* HRS Documentation Record at 73 "Because of surface topography and the proximity of the sources to Dead Creek, each of these sources drains into the creek directly (Ref. 8.")) That map, however, does not reflect the railroad spur or its impact on storm water flow from Site I.

EPA also erroneously attributed copper contamination in the PPE to Site G. The concentrations of copper presented for Site G are similar to background concentrations observed in soils in the site area. (ENVIRON at 4) The highest levels of copper concentrations in Site G soil samples are nearly identical to those found in the highest background soil sample collected at the site during Solutia's RI activities. (ENVIRON at 4) As discussed by ENVIRON, the data suggests that overland migration of hazardous constituents from Site G would not be expected to result in

elevated copper concentrations relative to overland migration from native soils. (ENVIRON at 4)

Similarly, concentrations of arsenic, cadmium, copper, and lead present from Site H are not significantly elevated relative to background soil concentrations at the site, and would not be expected to contribute to elevated levels of these metals in adjacent areas or in the PPE located more than two miles down stream. (ENVIRON at 4) As ENVIRON discusses, Sites G, H, and I "have not resulted in an increase in contaminant levels" at the PPE. (ENVIRON at 6)

2. EPA Has Improperly Characterized The Dead Creek Segments As Sources of Hazardous Substances

EPA identified Dead Creek Segments C, D, and E and a portion of F as Source 3 (DCC, DCD DCE, and DCF, respectively). (HRS Documentation Record at 32) The EPA considered this portion of Dead Creek to be an intermittent stream, where soils have been contaminated from the migration of hazardous substances. (HRS Documentation Record at 32) To characterize these segments as sources, EPA compared *soil* samples from these segments to background *sediment* samples from a location remote to Sauget Area 1. However, the HRS Guidance Manual states that background samples should be taken from the same environmental medium as site-related samples. (HRS Guidance at 67) Soil and sediment are not the same environmental medium. (HRS Appendix A to 40 CFR Part 300 §1.1) EPA should have compared the soil samples from DCC through DCF to background *soils* in the vicinity of the site, not with sediment samples from a remote location.

Sediments that are contaminated by migration are excluded from the definition of a source. (HRS Appendix A to 40 CFR Part 300 §1.1) EPA avoided this exclusion by characterizing the creek bed as contaminated soils, not contaminated sediments. (HRS Documentation Record at 32) In reaching this conclusion, EPA disregarded the USGS map that represents Dead Creek as a perennial stream. (HRS Documentation Record at 32) Then, having mischaracterized the creek bed as soils instead of sediments, EPA proceeded to compare the contamination in these "soils" with background *sediment* samples from an unnamed, pristine, perennial stream located more than 10 miles south of Dead Creek. (ENVIRON at 3) If the Dead Creek bed is sediment, then by definition these areas are not a source. If the Dead Creek bed is soil, then EPA ignored HRS Guidance Manual protocol by comparing those soils to sediments. Either way, EPA's inclusion of these creek segments as source areas is arbitrary, capricious and contrary to law.

Likewise, EPA has also selected inappropriate background samples for DCB. EPA identified DCB as a surface impoundment, which occupies the northern portion of Dead Creek. To classify DCB as a source, EPA compared DCB sludge samples with background sediment samples. According to the HRS Guidance Manual, the most appropriate background for sludges in a surface impoundment is soils in the vicinity of the site (HRS Guidance Manual at 344) EPA's

improper comparison of sludge with sediment, again, provides an inadequate basis to conclude that DCB is a source of hazardous substances.

Furthermore, even assuming that the use of sediment background samples is appropriate for comparison to DCB and DCC through DCF, EPA did not follow HRS sampling protocol. The HRS Guidance Manual recommends that background sediment samples should be collected from the same environmental setting as that of the site. Similarly, the Support Sampling Plan indicated that the background sampling stations would be located "either in the Dead Creek watershed or in a watershed that includes industrial, commercial, residential and farming land uses." (HRS Documentation Record, Ref.10, p.129) Yet, the background sediment samples were obtained from Reference Areas that were several miles away from Dead Creek. In addition, sample location maps and aerial photographs indicate that the samples apparently do not represent the industrial, commercial and residential setting of Dead Creek, but were obtained from predominantly agricultural areas. (ENVIRON at 3)

Finally, the HRS Documentation Record is insufficient, as it does not provide adequate evidence of the geo-physical equivalence of the Reference Area samples to site-related samples. In addition, the HRS Documentation Record does not evaluate, justify or document the appropriateness of these reference sampling locations for comparison to Dead Creek samples.

3. Substances Detected at The PPE May be Attributable to Sources Outside of Sauget Area 1

EPA has erroneously concluded that the contaminants found at the PPE are attributable to all seven of the disparate source areas that comprise Sauget Area 1. As discussed by ENVIRON, EPA's conclusion is based on a flawed hypothesis. (ENVIRON at 6-7) The level of contaminants found in Dead Creek steadily decreases to non-detect or to levels that are not significantly above background, as the creek flows south from DCB through DCE. The exception, of course, are the samples taken at the PPE in DCF. (ENVIRON at 7) As pointed out by ENVIRON, two possibilities exist for explaining the decrease and sudden increase in the contaminant levels: (1) that another source is contributing to the contamination; or (2) that the source areas upstream of DCE are not causing an increase in contaminant levels. (ENVIRON at 7)

Nevertheless, EPA failed to consider whether other sources have contributed to the contamination found at the PPE. As noted by ENVIRON, there is a two mile stretch of creek running from Site L, the southern most source in Sauget Area 1, to the PPE. This two mile span of Dead Creek passes other commercial and industrial concerns and through the town of Cahokia. (ENVIRON at 7) EPA's failure to consider the potential impacts of these areas along Dead Creek amounts to improper attribution to the seven source areas identified by EPA as Sauget Area 1

IV. EPA LACKS THE AUTHORITY TO CONSOLIDATE THE DISPARATE SAUGET SOURCE AREAS INTO ONE MEGA-SITE

Cerro objects to the EPA's proposal to consolidate Sites G, H, I and L and DCA, DCB and DCC through DCF, into Sauget Area 1 for purposes of HRS scoring. EPA's decision to consolidate these seven, separate and disparate source areas into Sauget Area 1 is arbitrary, capricious and contrary to law. See Mead v. Browner, 100 F.3d 152 (D.C. Cir. 1996) (holding invalid the aggregation of low risk sites with high risk sites to form one mega-site).

In Mead, EPA attempted to aggregate a low risk and a high risk site for purpose of scoring the sites for NPL listing. The proposed site included a coke plant, located over a mile away from a 2.5 mile contaminated section of the Chattanooga Creek and an adjacent dump site. The coke plant made tar products, coke and coal tar from the start of its operations in 1918 until 1987. *Id.* at 154. The Creek was contaminated with coal tar wastes. *Id.* at 153. After reviewing the analytical data for the creek and the coke plant, EPA concluded that "the tar deposits contaminating the creek 'in all likelihood' came from operations at the coke plant." *Id.* at 154. EPA, however, educed no evidence that the coke plant would qualify for listing independently or that it continued as a threat to the creek.

The United States Court of Appeals for the District of Columbia Circuit, which has exclusive jurisdiction over challenges to the listing of sites on the NPL, found the EPA's aggregation of the coke plant and the Creek into a single site to be inconsistent with the purpose of the NPL, which is to identify high priorities among the nation's known hazardous waste sites. The Court held:

> Permitting the inclusion of low-risk sites on the NPL would thwart rather than advance Congress's purpose of creating a priority list based on evidence of high risk levels. . . . The idea that Congress implicitly allowed EPA broad discretion to lump low-risk sites together with high-risk sites, and thereby to transform the one into the other, is anything but reasonable.

Id. at 156. The Court, thus, vacated the inclusion of the coke plant in the listed site.

The similarities between EPA's listing efforts in Mead and its efforts at the Sauget Area 1 Sites is striking. In Mead, because the coke plant made coal tar products and the Chattanooga Creek was contaminated with coal tar wastes, the EPA concluded that the plant and the Creek could be consolidated as a single site, notwithstanding: (1) that the Creek was over a mile away from the plant, (2) that the plant's discharges to the Creek had ceased many years prior and (3) that the plant alone would not qualify for inclusion on the NPL. At Sauget Area 1, because the EPA identified contamination in the PPE that is similar to contamination in some of the source areas, it has consolidated the source areas and the PPE into a single site, notwithstanding (1) that the source areas are 2-3 miles from the PPE, (2) that the EPA has not established a pathway between

many of the source areas and the PPE, (3) that the alleged pathway is largely historic, (4) that this alleged pathway either has been or will be eliminated as a result of the actions of Cerro and Solutia and (5) that none of the source areas qualify for listing on their own. In light of these similarities and the Court's decision in Mead, the EPA's aggregation of the Sauget Area 1 sites into a single site for purposes of NPL listing is arbitrary, capricious and contrary to law.

V. EPA'S FAILURE TO CONSIDER CERRO AND SOLUTIA'S DEAD CREEK REMOVAL ACTIONS AND THE CURRENT CONDITIONS AT DEAD CREEK IS ARBITRARY, CAPRICIOUS AND CONTRARY TO LAW

EPA's proposed listing of Sauget Area 1 totally disregards the DCA removal action. For example, EPA, in determining the hazardous substances present at DCA, relies on the sampling conducted by E&E in 1987 and the report issued by Avendt in 1990. (HRS Documentation Record at 21) However, the E&E and Avendt sampling occurred before the DCA removal action. Indeed, the purpose of the Avendt study was to delineate contamination in DCA to allow a cleanup to go forward. Any hazardous substances that either E&E or Avendt identified in DCA were removed and properly disposed of as of November 1990.

Similarly, EPA relies upon data collected by Solutia in January and February of 2000, but ignores the sediment remediation work that Solutia commenced in DCB just three months later in May 2000. (HRS Documentation Record at 25)

EPA's failure to consider the remediated condition of Dead Creek in scoring the Sauget Area 1 sites is inconsistent with EPA policy of considering current site conditions when scoring a site proposed for listing on the NPL. (See 55 Fed. Reg. 51532, 51567) Indeed, "consideration of removal actions is likely to increase incentives for rapid actions. If there has been a removal at a site, and the hazardous constituent quantity for all sources and associated releases is adequately determined, the hazardous waste quantity factor value will be based only on the amount remaining after the removal. This will result in lowering some hazardous waste quantity factor values," and, in turn, HRS scores. (55 Fed. Reg. 51542)

This policy represents an improvement over prior EPA procedures which failed to consider a site's remediated condition. In Linemaster Switch Corp. v. U.S.E.P.A., 938 F.2d 1299 (D.C. Cir. 1991) the court acknowledged this change in policy and stated that, "under the amended HRS, the agency now considers prior remedial actions" in calculating the HRS score at a site. Id. at 1307.

The purpose behind this policy is to create incentives for parties to expeditiously remediate a site without the need for government intervention. (55 Fed. Reg. 51567-68) This is precisely the initiative assumed by Cerro when it responded to contamination in DCA in 1990 and by Solutia when it addressed contaminants in the remainder of Dead Creek in 2000. In fact, EPA

encourages parties to remediate a site so that the site will not be subject to additional governmental regulation and an NPL listing. (*Id.*)

EPA's policy is logical since it is a waste of scarce government resources to score and list a site that has already been cleaned up. Nevertheless, despite this policy, EPA has ignored Cerro's and Solutia's extensive cleanup efforts in Dead Creek The current condition of Dead Creek should have been considered in scoring the Sauget Area 1 sites. EPA's failure to do so is arbitrary, capricious and contrary to law.

VI. EVEN IF DCA IS LISTED ON THE NPL AS A COMPONENT OF THE SAUGET AREA 1 SITES, EPA POLICY WOULD REQUIRE THAT THE SITE BE DELISTED

On November 1, 1995, EPA issued a Notice of Policy Change that permitted EPA for the first time to delete a portion of a site from the NPL where such portion meets the NPL criteria for delisting. See 60 Fed. Reg. 55466. Accordingly, EPA will permit a portion of a site to be delisted where that portion meets the delisting criteria set forth at 40 CFR 300.425(e). These criteria include whether responsible parties have implemented all appropriate and required response actions, whether EPA has determined that no further cleanup by responsible parties is appropriate, and whether the portion under consideration presents any threat to public health, welfare or the environment. Delisting also requires concurrence of the State in which the site is located.

Because of the removal action that Cerro performed at DCA, that portion of the Sauget Area 1 sites is eligible for delisting under the EPA policy change. Cerro, as a potentially responsible party for DCA, implemented the response action that the IEPA deemed appropriate and required. The IEPA has determined that there is no need for further response actions at DCA. (*See* Hooker Cert., Ex. 5) Any threat that DCA presented to public welfare or the environment has been eliminated by Cerro's response action. The State of Illinois should concur in the delisting of DCA, inasmuch as the State approved the DCA cleanup.

Accordingly, if the EPA listed the Sauget Area 1 Sites and included DCA as one of those sites, DCA would be immediately eligible for delisting. To require Cerro and the Agency to go through the trouble and expense of a delisting petition would be a tremendous waste of responsible party and Agency resources. The more logical and appropriate course is for the EPA simply to exclude DCA from the Sauget Area 1 Sites if it ultimately chooses to list those sites.

VII. CONCLUSION

The listing of the Sauget Area 1 Sites is flawed on multiple levels. EPA failed to establish an observed release to a surface water body. It used inappropriate background levels. It has failed to establish a legitimate nexus between the source areas and the PPE. It has failed to rule out other sources for the contamination identified at the PPE. It has consolidated low and high risk sites into a single site. In Tex Tin Corporation v. EPA (Tex Tin II), 992 F.2d 353, 354 (D.C. Cir. 1993), the United States Court of Appeals for the District of Columbia vacated the listing of a site, reasoning, "EPA's imprecision [has risen] to such a level that agency action becomes arbitrary and capricious and not otherwise in accordance with law." For the reasons set forth above, this reasoning applies equally to the Sauget Area 1 Sites. Consequently, Cerro respectfully requests that EPA withdraw its proposed listing of the Sauget area 1 Sites.

Thank you for your consideration of these comments.

Respectfully submitted,

Richard F. Ricci

RFR:gm

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12/13/01 1136841.01
Enclosure(s)

bcc: Raymond J. Avendt, Ph.D, P.E.
Mr. Gary C. Ewing
Mr. Joseph M. Grana
Michael L. Rodburg, Esq.
Todd M. Hooker, Esq.

COMMENTS ON THE HRS DOCUMENTATION RECORD SAUGET AREA 1 (ILD 980792006)

Prepared for

Lowenstein Sandler P.C.
Roseland, NJ

Prepared by

ENVIRON International Corporation
Princeton, NJ

December 2001

Comment 1: *The selection of the PPE and observed release area is inappropriate.*

According to the Hazard Ranking System, 40 CFR 300 (the "HRS") (USEPA 1990), a critical component of scoring a site based on the surface water migration pathway involves the identification of one or more probable points of entry ("PPE") to a surface water body to establish an observed release to that surface water body. The HRS Documentation Record use fails to conclusively demonstrate that the area of observed release is within a surface water body as defined by 40 CFR Part 300 Appendix A, and fails to demonstrate the appropriateness of the PPE. This comment is discussed further below.

The HRS Documentation Record identifies two distinct areas in CS-F of Dead Creek. These are 1) an intermittent segment of Dead Creek, and 2) an "in-water" segment of Dead Creek. According to the HRS Documentation Record, the palustrine, forested wetland along Dead Creek, the northern portion of which defines the probable point of entry (PPE) for HRS scoring purposes is identified as a "perennial" wetland. However, the HRS Documentation Record does not provide the basis for concluding that the forested wetland associated with Dead Creek is perennial, i.e., perennially inundated in water, other than the identification of this segment as a wetland according to National Wetland Inventory Maps. It should be noted that designation as a wetland does not imply that such an area is perennially inundated. Based on documentation reviewed by ENVIRON and not considered by EPA in the HRS Documentation Record, the in-water segment of Dead Creek, as identified in the HRS Documentation Record, is classified as an intermittent stream (USDA 1978). In addition, according to the Preliminary Ecological Risk Assessment, the wetland is only periodically flooded (HRS Ref. 65, p. 2-1). Consequently, based on the available data, it appears that the area of observed release and the PPE are inappropriately characterized in the HRS Documentation Record, and, as such, the HRS Documentation Record has not established that an observed release has occurred.

Comment 2: *In its HRS scoring of the site, EPA has made inappropriate comparisons to background concentrations in its attempt to document an observed release.*

The HRS requires that an observed release be established either by direct observation of the release of a hazardous substance into the media being evaluated or by chemical analysis of samples appropriate to the pathway being evaluated. The minimum standard to establish an

observed release by chemical analysis is analytical evidence of a hazardous substance in the media significantly above the background level. In its HRS scoring of Area 1 in Sauget, IL, heretofore referred to as "the site", EPA has attempted to document an observed release by comparing the analytical chemical results from sediment samples in CS-F with sediment samples in Borrow Pit Lake, which it has designated as a background location. However, reference documentation indicates that the area currently occupied by Borrow Pit Lake was subject to a massive excavation sometime after 1954 in order to provide materials for construction of levees in the area. Borrow Pit Lake is a 6000 ft long and 500 ft wide rectangular area. The excavation to its current size likely resulted in the significant removal of sediments and/or naturally occurring soils from the area. While information on the pre-excavation morphology of Borrow Pit Lake is not known, due to large-scale excavation and alteration of its characteristics, the sediments in Borrow Pit Lake are not likely to be equivalent to those in a nearby natural water body such as Dead Creek.

The HRS Guidance Manual (USEPA 1992) recommends that background samples *"should be as similar as possible, except for potential influence from the site"*. Typically, measures of geo-physical equivalency in sediment samples are based on parameters such as organic carbon content, grain size distribution, and fractions of silt, sand and clay in the samples. EPA has not demonstrated that the release and background sampling locations are physically comparable. Based on the above issues, the use of the sampling locations in Borrow Pit Lake as background locations are inappropriate and inconsistent with EPA's HRS guidance and consequently cannot be used to establish that a release has occurred.

Comment 3: *In its evaluation of source areas at the site, EPA has made several inappropriate and inconsistent comparisons to background concentrations.*

The HRS defines a source as *"any area where a hazardous substance has been deposited, stored, disposed, or placed, plus those soils that have become contaminated from migration of a hazardous substance. Sources do not include those volumes of air, ground water, surface water or surface water sediments that have become contaminated by migration, except: in the case of either a groundwater plume with no identified source or contaminated surface water sediments with no identified source, the plume or contaminated sediments may be considered a source" (USEPA 1990).*

Areas of the Dead Creek channel identified as CS-C, CS-D, CS-E, and a portion of CS-F have been collectively identified as Source 3 in the HRS Documentation Record (USEPA 2001). Because Dead Creek is an intermittent stream, the EPA considers these sections of Dead Creek to be a source, wherein soils have become contaminated from the migration of hazardous substances through runoff from upstream Area 1 sources. Therefore, based on the methodology presented in the HRS Guidance Manual, which states that background samples should be from the same environmental medium as the site-related samples, the most appropriate background comparison is to soils in the vicinity of the site. However, EPA's characterization of CS-C, CS-D, CS-E, and the intermittent portion of CS-F as a source is based on comparisons of soil samples obtained from these areas to background sediment concentrations (USEPA 2001). Therefore, EPA's identification of CS-C, CS-D, CS-E, and the intermittent portion of CS-F as a source of contamination to the area of observed release is based on inappropriate background comparisons.

Notwithstanding the above argument, even if sediment background samples are considered as the most appropriate background for soils in CS-C, CS-D, CS-E, and the intermittent portion of CS-F, the sediment background samples should be collected from a similar environmental setting as that of the site, or near the site, as recommended in the HRS Guidance Manual (USEPA 1992). However, for the Sauget area, the background sediment samples were obtained from two Reference Areas one of which is several miles away from Dead Creek and the other of which is greater than ten miles away from Dead Creek. According to sample location maps and aerial photographs, the Reference Area samples do not appear to represent the industrial/urban setting of Dead Creek, but are from predominantly agricultural areas. This selection of the Reference Area sample locations is also inconsistent with the objective stated in the Support Sampling Plan, which indicates that the sampling stations would be located *"either in the Dead Creek watershed or in a watershed that includes industrial, commercial, residential and farming land uses"* (HRS Ref. 10, p. 129). The HRS Documentation Record provides insufficient documentation on the geo-physical equivalence of the Reference Area samples to site-related samples, and does not evaluate or document the appropriateness of these reference sampling locations for comparison with Dead Creek samples.

Comment 4: *EPA has not presented a reasonable scientific basis for concluding that a portion of the observed release may be attributed to each of the sources. Based on available data, the only sources of significant releases of hazardous constituents to Dead Creek appear to be*

historic discharges from Source 1 and Source 2 which have been or are currently being remediated through removal actions.

The HRS requires that, in order to establish an observed release by chemical analysis, "*some portion of the release must [emphasis added] be attributable to the site*" (USEPA 1990). The HRS Documentation Record maintains that the "*observed releases by chemical analysis reflect commingled contamination from each source at the site*". While one may conclude that the presence of several hazardous constituents in the area of observed release may represent commingled contamination, the data presented and relied upon by EPA in the HRS Documentation Record do not provide adequate basis for EPA's conclusion that the commingled contamination in the area of observed release is in fact the result of releases from each source at the Site. Rather, it is believed that the commingling is not a result of releases from numerous sources, but that the releases occurred from only Source 1 and Source 2, two sources that managed commingled hazardous wastes. For example, the HRS Documentation record attributes copper contamination in the release area to Landfill G. However, the concentrations of copper presented for Landfill G are similar to background concentrations observed in soils in the site area (HRS Ref. 40a). Copper concentrations in Landfill G soil samples are as high as 200 ppm, and are comparable to the 190 ppm detected in the highest background soil sample collected at the site during the RI activities. Based on these data, the resulting impact of overland migration of constituents from Landfill G is expected to be similar to overland migration of constituents from background soils in Area 1. Similarly, concentrations of arsenic, cadmium, copper and lead presented for Landfill H are not significantly elevated relative to background soil concentrations at the site, and would not be expected to contribute to elevated levels of these metals in the observed release area located approximately two miles downstream.

In the HRS documentation record, EPA presents data which were collected by Solutia in January and February of 2000. Solutia collected 31 sediment samples from the wetlands along CS-F and Borrow Pit Lake (i.e., the "northwestern fork of the wetlands") that were analyzed for "industry specific" constituents, namely PCBs, copper, and zinc (HRS Reference 40a, pp. 173-179, App. B-5; Ref. 63, pp. 10-12). Of the 31 sediment samples collected by Solutia in January and February of 2000, 23 samples were collected from the northeastern and southern forks of the wetlands that comprise CS-F, and eight "background" samples were collected from the northwestern fork of the wetland (Borrow Pit Lake) (Ref. 63, pp. 10-14). The results of this

sampling are summarized in Figures 1, 2 and 3 in the Solutia, Inc. Sample Location Maps for Sauget Area 1 RI/FS (HRS Ref. 63, pp. 10-14). Review of these data indicate that there is an abrupt decline in the contaminant levels in the southern fork of Borrow Pit Lake as compared to the concentrations observed immediately upstream in the northeast fork. The levels of PCBs, copper, and zinc in the southern fork of the wetlands are one to two orders of magnitude lower than the levels in the northeast fork of the wetlands, and are comparable to EPA's reported background concentrations in the northwest fork of the wetlands. For example, PCB levels which are as high as 11,000 mg/kg in the northeast fork decrease to non-detectable levels in the southern fork (as defined by southern-most sample location FASED-CSF-S6E-0-10IN). Similarly, zinc levels which are as high as 10,000 ppm in the northeast fork fall to levels ranging from 84 to 680 mg/kg in samples FASED-CSF-S7E-0-IN and FASED-CSF-S12-0-15IN, respectively. The upper-end zinc results are comparable to the levels of zinc found in background samples in the northwest fork which ranged as high as 490 mg/kg. Finally, copper levels which were detected as high as 5,400 mg/kg in the northeast fork, fall to levels ranging from 10 to 88 mg/kg in samples FASED-CSF-S4-0-7IN and FASED-CSF-S11W-0-10IN, respectively, in the southern fork.

The abrupt decline in contaminant concentrations corresponds to the location where CS-F intersects Borrow Pit Lake. As noted above, Borrow Pit Lake was subject to substantial excavation sometime after 1954 (Roux 2001) to construct levees in the area. Based on these known excavation activities and the corresponding decline in contaminant levels at the excavation location, it is evident that the excavation of Borrow Pit Lake resulted in the removal of the contaminated sediments from the southern fork. At or around the same time period, Source 1 (CS-A) was first modified to act as an impoundment (reportedly between 1940 and 1950) (HRS Ref. 11; Ref. 48). Similarly, Source 2 (CS-B) was also modified between 1950 and 1962 to act as an impoundment (HRS Ref. 11; Ref. 13, p. 19; Ref. 32; Figure 2). Based on this sequence of events, ENVIRON believes that the creation of impoundments at Source 1 and 2 effectively controlled the releases of hazardous constituents to Dead Creek from those sources somewhat concurrently with contaminant removal actions that were a result of sand mining from the southern fork of the wetlands. These control measures prevented the release of significant additional levels of hazardous constituents, as evidenced by the lack of recontamination of the nearby exposed materials (i.e., soils, sediments) in the southern fork of the wetlands. Conversely, if significant releases were occurring from Source 3 and Areas G, H, I, L, M, and N after 1954, such releases would have continued to contaminate newly exposed sediments in the southern

fork. To the contrary, however, the sediment data collected by Solutia in the southern fork indicate that contaminant levels are orders of magnitude lower than in the northeast fork, EPA's designated release area. This establishes that since 1954 releases from Source 3 and Areas G, H, I, L, M and N have not resulted in a significant increase in contaminant levels at the observed release area. As a corollary to the above, the background levels of constituents in CS-C through the overland portion of CS-F represent residual contamination from historic uncontrolled releases from only Source 1 and Source 2 both of which have been or are currently being remediated through removal actions conducted pursuant to Consent Orders.

Finally, EPA has not provided compelling data indicating that releases have occurred from source areas and have impacted the observed release area. For example, concerning Site I (Source 6) the HRS Documentation Record indicates that drainage from the source is currently toward former Dead Creek segment CS-A. However, the 1988 Ecology and Environment Report (HRS Ref. 3a) which is used to support this conclusion, fails to account for the railroad spur on Cerro's property that serves as a barrier between Source 1 and Source 6. According to the trial testimony of Paul Tandler, a former Cerro employee (Volume II p. 90-91), a railroad spur and enbankment were built in approximately 1969 in a north/south direction between Source 6 and the Dead Creek which would have prevented surface water runoff from Source 6 from entering the creek. EPA does not document topographic drainage patterns prior to the interceptor sewer and railroad enbankment and therefore has not established whether releases from Source I have contributed to an increase in contaminant levels at the observed release area.

Comment 5: *EPA does not consider impacts of other potential sources between the designated PPE and the alleged source areas.*

In the HRS Documentation Record, EPA attributes the release of contaminants in the wetland along CS-F to all of the identified source areas based on a hypothesis that "*the observed releases reflect comingled contamination from each source at the site*". However, the data cited in the HRS Documentation Record do not clearly demonstrate or document known releases from any named sources other than Source 1 and Source 2. In addition, EPA fails to consider the possibility of other unidentified potential sources between the named sources and the wetland (approximately 2 miles downstream) that may have also contributed to the commingled contamination in the area of observed release. In July 2000, Solutia provided figures showing the locations of the

undeveloped area sampling results to USEPA (HRS Ref. 39). The figures present the results of sampling and a broad scan analysis of chemicals in Creek Segments B through F. In particular, the results of PCB, arsenic, copper, nickel and zinc, are shown in Figures 3, 6, 7, 8 and 9, respectively. For all the above constituents, the data indicate a steadily decreasing level of contamination in sediments going from Creek Segment B through Creek Segment E. The levels of these constituents in Sample SED-CSE-S3-0.2FT (the most downstream sample in CS-E) decrease to either non-detectable levels or levels which are less than three times the level of the same constituents in background samples identified by EPA in the northwest fork of the wetlands area. However, in all cases, the levels of all constituents are significantly higher in Sample SED-CSF-S2-0.2FT which is in the release area defined by EPA in CS-F. Although several reasons may account for the decrease and subsequent increase in constituent levels in these samples, two possibilities are 1) that another source of contamination is contributing to the sediment contamination in the northeast fork of the wetlands south of Creek Segment E, and 2) that the source areas upstream of Creek Sediment E are not causing an increase in contaminant levels in the northeast fork of the wetlands which serves as EPA's area of observed release. It should be noted that it is approximately two miles from the southern-most source area identified by EPA (i.e., Area L) to the area of observed release, and in this span Dead Creek appears to pass through other industrial and commercial developments and the town of Cahokia.

References:

USEPA. 1990. Hazard Ranking System. 40 CFR 300. December 14.

USEPA. 1992. Hazard Ranking System Guidance Manual. Office of Solid Waste and Emergency Response. EPA 540-R-92-026. November.

USEPA. 2001. HRS Documentation Record for Sauget Area 1. Region 5. SFUND-2001-0009-0011. May.

USDA. Soils Survey of St. Clair County, Illinois. 1978. Sheet Number 26. October.

Roux Associates, Inc. 2001. Engineering Evaluation/Cost Analysis Remedial Investigation/ Feasibility Study Sauget Area I, Sauget and Cahokia, Illinois (DRAFT).

CERTIFICATION OF TODD M. HOOKER

Todd M. Hooker, of full age, hereby certifies as follows:

1. I am an attorney with the law firm of Lowenstein, Sandler PC, attorneys for Cerro Copper Products Co. ("Cerro") and, as such, am familiar with the facts set forth herein.

2. I make this Certification in support of Cerro's comments which are in response to the National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 37 published at 66 Fed. Reg. 47612 on September 13, 2001 to list Sauget Area 1 located in Sauget, Illinois on the National Priorities List.

3. Attached hereto as Exhibit 1 is a true and correct copy of a correspondence from David Evans, Director, United States Environmental Protection Agency, State, Tribal & Site Identification Center to Todd M. Hooker, dated October 17, 2001.

4. Attached hereto as Exhibit 2 is a true and correct copy of a Village of Monsanto, Illinois Sewer Map, dated October 1960, prepared by Metcalf & Eddy, that depicts a storm sewer located at the southwestern corner of Site I, on the north side of Queeny Avenue, flowing east, away from Dead Creek.

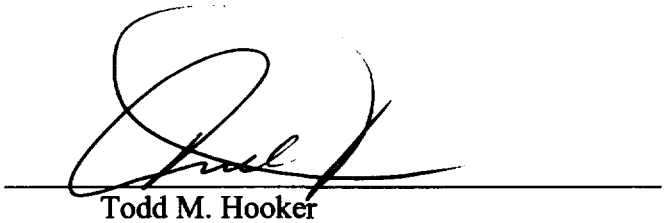
5. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt from the deposition testimony of Charles A. Menzie, dated March 2, 1995, and a true and correct copy of Figure 1, referenced at page 99, line 7, which depicts the railroad spur on Cerro's property, separating Site I from Dead Creek Segment A.

6. Attached hereto as Exhibit 4 is a true and correct copy of an excerpt from the trial testimony of Paul Tandler (Vol.2 PM), dated September 13, 1995.

7. Attached hereto as Exhibit 5 is a true and correct copy of a correspondence from James L. Morgan of the Illinois Attorney General's Office to the

President of Cerro Copper Products Co. and Michael Rodburg, Esq., of Lowenstein, Sandler, Kohl, Fisher & Boylan, dated June 20, 1991.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Todd M. Hooker

DATED: December 12, 2001

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

October 17, 2001

Todd M. Hooker
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, NJ 07068

Re: Extension to Comment Period for Proposed NPL Listing of Sauget Areas 1 and 2

Dear Mr. Hooker:

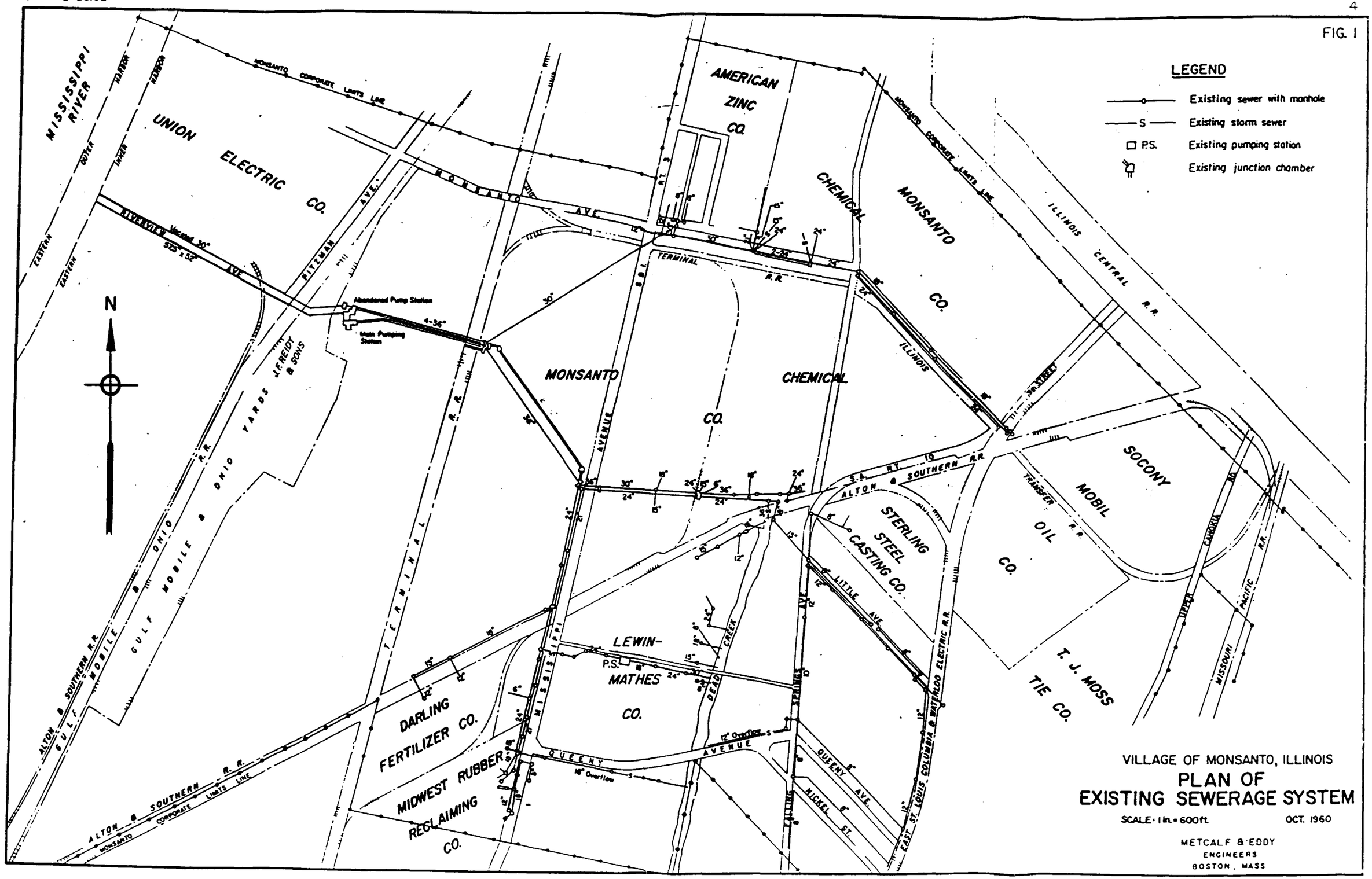
The purpose of this letter is to respond to your October 15, 2001 letter requesting an extension to the comment period for the proposed listing of the Sauget Area 1 and Sauget Area 2 sites. EPA has determined that an extension to the comment period is appropriate based on Docket concerns. Since there was an approximate 30 day delay in forwarding the appropriate site information, the extension to the comment period is for 30 days. The original comment period closes on November 13, 2001. However with this extension, EPA will accept your comments on the Sauget Area 1 and Sauget Area 2 sites until December 13, 2001. I hope this addresses your concerns.

Sincerely,

Dave Evans

Dave Evans, Director
State, Tribal and Site Identification Center

FIG. 1



VILLAGE OF MONSANTO, ILLINOIS

PLAN OF EXISTING SEWERAGE SYSTEM

SCALE: 1 in. = 600 ft. OCT. 1960

METCALF & EDDY
ENGINEERS
BOSTON, MASS

38125-Z-14202

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

CERRO COPPER PRODUCTS COMPANY,)

Plaintiff,)

vs.) No. 92-CV-204-WDS

MONSANTO COMPANY and MONSANTO CHEMICAL COMPANY)

Defendant.)

VOLUME I

DEPOSITION OF CHARLES A. MENZIE

Taken on behalf of Plaintiff

March 2, 1995

Reporter: Mary E. Walker, CSR/RPR No. 084-003322

Q Did you receive -- when you received the deposition transcript, did you get all the exhibits, too?

A I think so.

Q So if there was a map that was an exhibit, then you would have had it as an exhibit to the deposition?

A That's correct, in that context.

Q Where did you understand that Cerro received its scrap copper?

A It purchased scrap copper from companies that specialized in the gathering of scrap material. And the impressions I had was that it would also obtain scrap copper from a wide variety of sources who may be in the process of junking material containing a high percentage of copper.

Q My question was more where at the plant, where did it come into the plant?

A My general impression it came in along the rail spur and perhaps some was trucked in.

Q When you say it came in along the rail spur, where was the rail spur located, your understanding anyhow?

A Well, according to the figures I have --

Q Tell me which one you are looking at.

A Let me get a good one here.

Q Let me just see what figures you are looking at. You are looking at Figure 1 to your report?

A Yeah. This dotted line represents the rail spur.

Q Okay. Which dotted line? You are referring to the dotted line that goes basically parallel to Dead Creek on the east side?

A Right. And then comes over.

Q So it is -- go ahead.

A And I think swings around and sort of crosses where Dead Creek, you know, over Dead Creek to the west side.

Q Okay. It's your understanding that Cerro's scrap copper came in along that rail spur?

A That is part of my understanding, yeah.

Q And where was it unloaded?

A I don't have a good fix on that.

Q And you also have some information

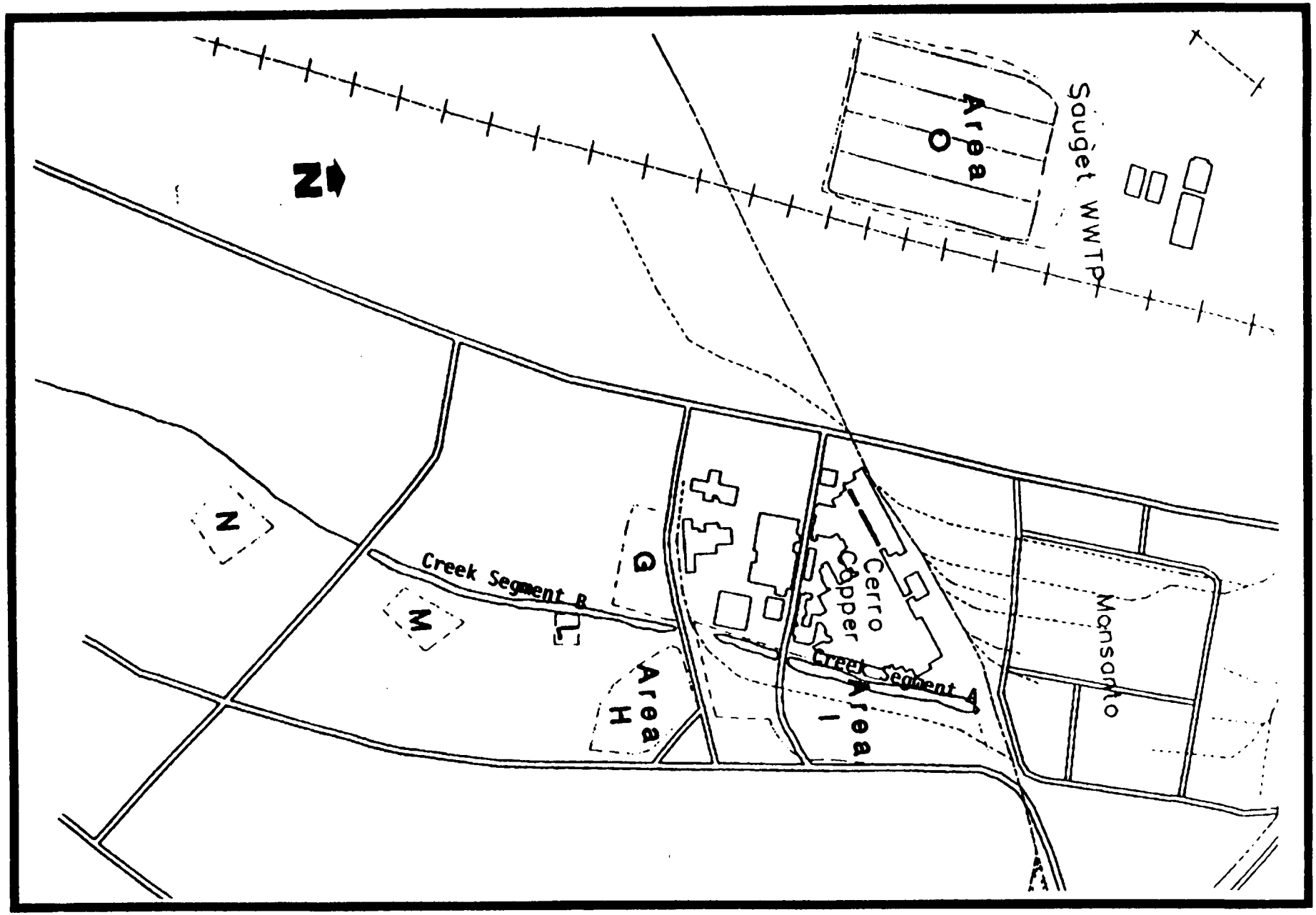


Figure 1: Locations of Cerro, Monsanto and Study Areas Relative to Dead Creek

Menzie-Cura

398/1.95

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTH

CERRO COPPER PRODUCTS CO.,)) Civil A

Plaintiff,) No. 92-CV-204-PER

vs.) East St. Louis, Illinois

MONSANTO COMPANY,))

Defendant.) VOLUME II - AFTERNOON SESSI

TRANSCRIPT OF TRIAL BEFORE THE HONORABL

UNITED STATES DISTRICT JUDGE.APPEARANCES:

For Plaintiff: LOWENSTEIN, SANDLER, KOHL,
By Richard F. Ricci, Esq.
Paul F. Koch, II, Esq.
Patrick J. Whalen, Esq.
65 Livingston Avenue
Roseland, New Jersey 07068

For Defendant: COBURN & CROFT
By Kenneth R. Heineman, Esq.
Joseph G. Nassif, Esq.
One Mecantile Center, #2700
St. Louis, Missouri 63101

Court Reporter: Sherrie L. Merz, RMR, RPR, CSR
Rankin Reporting & Legal Video
1015 Locust Street, Suite 911
St. Louis, Missouri 63101

Proceedings recorded by mechanical stenography; transcript produced by computer.

removed and put back into the process.
Q. So did you put some pond sludge over on Site I?
A. Near Falling Springs Road. We erected a temporary enclosure to let it dry and then because of the metal content we cleaned it out and put it back into service.
Q. Put it back into service?
A. Into the furnace, yeah.
Q. What is this sludge, you say it has a high metal content?
A. Well, this is sediment from our mill-use pond which receives the contact cooling water from our anode casting operation. There's sand, silica in the pond needs to be cleaned periodically in order to be able to receive the water. And in one instance, I don't recall the exact year, we decided to take the material to a drying area on what is called Site I. A bin of sorts was constructed.
Q. To hire somebody to bring trucks in and move it over there?
A. I'm reasonably certain trucks were hired but the personnel was ours.
Q. Would surface runoff from the slag and the sludge that you put in Site I run into Dead Creek Section A?
A. Hardly.
Q. Hardly?
A. Yeah.

I N D E X

DEFENDANT'S EXHIBITS		Marked	Received
80	Plot plan	142	
106	Diagram	120318	Publication
342	Memo	159350	Memo
400	Letter and attachment	108672	Draft document

Q. What do you mean hardly?

A. Well, because the railroad embankment had been built that would keep any surface runoff from the Site I area east of the railroad spur from entering Dead Creek.

Q. When was that railroad spur built?

A. In 1969.

ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

June 20, 1991

President
Cerro Copper Products Co.
P.O. Box 66800
St. Louis, Missouri 63166

Michael Rodburg
Lowenstein, Sandler, Kohl,
Fisher & Boylan
65 Livingston Avenue
Roseland, New Jersey 07068-1791

Re: People of the State of Illinois v. Cerro Copper Products Co.
United States District Court, Southern District of Illinois
Civil Action No. 90-CV-3389

Gentlemen:

Pursuant to Section VII, paragraph 7(A) of the consent decree entered on July 5, 1990 in the above-referenced cause, this is to notify you that the Attorney General's office and the Illinois Environmental Protection Agency are in agreement with the conclusions of the final report, as received from Cerro Copper Products Company on April 3, 1991, that the work required by the consent decree has been satisfactorily completed. Please note that this does not constitute notice under Section VII, paragraph 7(b), that all terms of the consent decree have been satisfactorily completed, since terms of the decree remaining to be fulfilled include billing and payment for the plaintiff's response and oversight costs incurred since the last billing and payment.

Sincerely,

James L Morgan

James L. Morgan
Chief, Environmental Control Division

JLM:bd
cc: Paul Takacs
Bruce Carlson

CER 037396